IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 645

JOSEPH LEE JONES AND BARBARA JO JONES,
Appellants,

v.

ALFRED H. MAYER COMPANY, CORPORATION, ET AL.,
Appellees.

MOTION AND BRIEF OF THE MARYLAND PETITION COMMITTEE, INC., OLIVER ELLSWORTH RUE, AND MARYLAND LOBBY FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

GEO. WASHINGTON WILLIAMS,
231 St. Paul Place,
Baltimore, Maryland,

THOMAS F. CADWALADER,
1109 Fidelity Building,
Baltimore, Maryland,

Attorneys for:
Maryland Petition Committee, Inc.,
Oliver Ellsworth Rue,
Maryland Lobby.

The Daily Record Co., Baltimore, Md. 21203

INDEX

Table of Contents

Table of Citations

Cases

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 645

JOSEPH LEE JONES AND BARBARA JO JONES,
Appellants,

v.

ALFRED H. MAYER COMPANY, CORPORATION, ET AL.,
Appellees.

MOTION OF THE MARYLAND PETITION COMMITTEE, INC., OLIVER ELLSWORTH RUE, AND MARYLAND LOBBY FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The Maryland Petition Committee, Inc., Oliver Ellsworth Rue, and Maryland Lobby respectfully move for leave to file the annexed Brief *Amicus Curiae* in this case. Appellants have replied that they are not granting any further permission for filing of briefs, and final word has not been received from the Appellees, in whose interest we are filing.

The Maryland Petition Committee, Inc., composed of Citizens, Voters, Taxpayers, Owners of real and other property, and Parents of children attending public schools, is interested in and will be objectively affected by the reversal of this case, with emphasis on members' Property Rights and Personal Right of Choice; Oliver Ellsworth Rue, real estate developer, is concerned for his interests and rights as a citizen and as a businessman, and similarly concerned are the members of Maryland Lobby, composed of a group

of citizens interested in preserving the American Constitution; wherefore these Petitioners desire to file a Brief *Amicus Curiae*, and in support thereof contend:

Firstly, that if the Fourteenth Amendment is a valid part of the Constitution, the Court is still without jurisdiction, as the State was not, as such, participating in any of the *alleged activities* of the Appellees;

Secondly, if the connections had with the Appellees are as alleged by the Appellants, they do not support this case, as the State did nothing in connection with the *conduct* of the business, *namely*, marketing of the products, etc., and, therefore, the cited activities do not come within the reach of the Fourteenth Amendment, or the Constitution otherwise;

Thirdly, that the right of choice in dealing with one's property should be preserved;

Fourthly, that religious liberty should be protected under the First Amendment; and

Fifthly, that the Fourteenth Amendment is an unconstitutional instrument.

The Movers therefore respectfully request leave to file a Brief *Amicus Curiae*.

Respectfully submitted,

GEO. WASHINGTON WILLIAMS,
231 St. Paul Place,
Baltimore, Maryland,

THOMAS F. CADWALADER,
1109 Fidelity Building,
Baltimore, Maryland,

Attorneys for:

Maryland Petition Committee, Inc.,
Oliver Ellsworth Rue,
Maryland Lobby.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 645

JOSEPH LEE JONES AND BARBARA JO JONES,
Appellants,

v.

ALFRED H. MAYER COMPANY, CORPORATION, ET AL.,
Appellees.

BRIEF AMICUS CURIAE OF THE MARYLAND PETITION COMMITTEE, INC., OLIVER ELLSWORTH RUE, REAL ESTATE DEVELOPER, AND MARYLAND LOBBY IN SUPPORT OF THE APPELLEES

STATEMENT

This Brief *Amicus Curiae* is submitted on behalf of the Maryland Petition Committee, Inc., Oliver Ellsworth Rue, and Maryland Lobby in accordance with Rule 42(3) of the Court's Rules and against the Appellants' position.

INTEREST OF THE AMICUS CURIAE

The Maryland Petition Committee is a corporation interested in Public Service and particularly in preserving local or State's Rights against the invasion thereof, of which the present case is one phase, and is composed variously of Citizens, Voters, Taxpayers, Property Owners, Business and Professional People, and Parents of Public school chil-

dren who all are interested in protecting their personal and business rights and property interests according to their judgment and feelings while allowing to all others the same rights as far as it can be done without imposing on the rights of others. The right to try is here afforded, but the right to try does not mean the right to force one's self on others or to obtain rights by imposition — the rights of Choice and Privacy are fundamentals of life.

Oliver Ellsworth Rue, real estate developer, is concerned in the issue of this case as a private citizen and as a businessman.

Maryland Lobby is a group of citizens interested in preserving the American Constitution.

Firstly, as to State Involvement, the contact of the State with the Appellees in no way involved the Fourteenth Amendment as long as nothing done by the State, affirmatively, in any way supported any alleged acts of the Appellees. There was no legal obligation to insert negatives or anticipate any potentially wrongful acts. No charter is obliged to make such negatives unless clearly obliged to do so by express law, and there is no express or even implied obligation to do so. For instance, the Supreme Court has rejected the loyalty oath preceding employment, a natural presumption of integrity existing.

Secondly, the State was in no way involved in Marketing, and there is no allegation or pretense of the State's having any contact with the Appellees in connection with the *marketing* of their products or affirmatively authorizing or approving the practices alleged. Even the *Skelley v. Kramer* case, 334 U.S. 1, said that covenants were valid even though not enforceable in the Courts, yet we have *U. S. v. Guest,* 383 U.S. 745, by escalation. The Amendment contemplates that individuals in their dealings are not

amenable to the Amendment. Corporations under that Amendment have many rights of individuals — so held a long time ago by this Court. These Appellees had a right to conduct their business successfully and as common sense and prudence directed, if not interdicted by some positive or other recognized law, and we contend that there was nothing extant to prevent them from conducting their business as business judgment and everyday common sense dictated, and the necessity of the use of their current methods is now a matter of *everyday* knowledge and *common sense* if one expects to be successful. The fleeing of the mass of the white people from the cities is incontrovertible proof of the wisdom of this business judgment.

The *cities* are palpable and very vocal witnesses to the common sense and good judgment of the Appellees if they wanted to have a successful project. One element is trying to impose or force itself, and now by law, on others in deprivation of their Right of Choice in their associations and way of life. Opportunity means the right to try — to "pursue" (Declaration of Independence) — and not to force one's self on others in such conditions as here presented — and that is all the Appellants are entitled to, as against the Appellees. Good manners, even, as a rule, prevent people from pushing themselves where they are not welcome or acceptable, although good manners today seem not to be as prevalent as in days past. Private Clubs will be next.

Nonaction of the State is not action. The Fourteenth Amendment contemplates action *only*. The most that can be said is that the State assisted in *creating* the agency of business, and after that the business was run as any intelligent Person would run it if he expected to be successful, and it was run intelligently under the known conditions of the times and circumstances, which is a matter for Judicial notice in view of the great mess now existing.

Thirdly, as to Right of Choice in dealing with his property, one has the right to act on choice, a fundamental element of life. When such notice is filched from him, the levelling off is a long step to Communistic control. *Now,* one's property may be taken away from him to enable development by *others* in the allegedly public interest — a long step on the way in the escalation. There now seems to be no end to the escalation of the Federal government, though some lower courts have stepped in where they can act with respect to this Court, as here, which Decisions we are urgently supporting.

Fourthly, as to the application of the First Amendment, Religion creates one of the stronger of human feelings, and as the Court has said that there is a *wall* between Religion and the Government, and there are many of strong Religious Belief who believe that according to Holy Writ there is a *wall* between the antipodal Races, in support of this view the following citations are made:

> *Jude* 7 "Even as Sodom and Gomorrah, and the cities about them in like manner, giving themselves over to fornication, and going after *strange* flesh, are set forth for an example, suffering the vengeance of eternal fire." (Emphasis supplied.)
>
> *Hosea* 5:6-7 "And they shall go with their flocks and with their herds to seek the Lord; but they shall not find him; he hath withdrawn himself from them. They have dealt treacherously against the Lord: for they have begotten *strange* children . . . " (Emphasis supplied.)

Other *Bible* citations include *Proverbs* 22:14, *Psalms* 144:11-12, *Jeremiah* 2:21-26, and *Proverbs* 23:27.

The well known views of the Founders of the two Leading Political Parties, Presidents *Jefferson* and *Lincoln,* are *in accord* with the above feelings and beliefs in that they

were both for the Separation of these two Races, and their views are too well known to require quotation or citation; and the End Result to the two Races has been Publicly Expressed by the two current leading English speaking Historians, Nevins and Toynbee: *U. S. News & World Report,* November 14, 1958 and May 10, 1965, respectively — both to the effect that complete Integration in America will lead to complete Amalgamation of the Races. Indices supporting them are such as the recent Rusk and Canadian Cabinet Minister Families, and in their shadow is the case of Marshall Field's Family, aside from the everyday experience of "The Man on the Street". The End Result is indisputable to anyone with the *vision* referred to in the *Book of Proverbs,* and we now respectfully challenge the refutation of these four competent witnesses. This Position does not, or at least does not necessarily, involve *Hatred* or any question of who is *better* than whom. It is merely a case of *Birds of a Feather Flocking together; Like* being with *Like* and wanting to Preserve their *God-created* difference. These Truths are too well known to require laboring, and are now placed before the Court. In the spirit and interest of such People we urgently present this Point. The Cold and Palpable truth is the Fear, as indicated by Jefferson and Lincoln, now on view of History, as they understood History, and as Nevins and Toynbee now understand it, is the repulsion of the thought of the Murder-Suicide of the White Race — the Physical mixing of the Races, *a là* Ruskitis et al. That is the *real backbone of the Problem,* and the difficulty of getting united action is the truth of Hamilton's Remark in the *Federalist,* Article 27: "A thing that rarely strikes the senses generally has little influence on the mind." The current reaction shows the truth of that Remark. Those who because of their religious feelings do not want to be deprived of their God-given right to remain as He created them, wish to go along with

the two Presidents on Race Preservation and homogeneity, and in so doing are in good company. They therefore object to being deprived of their rights under the First Amendment.

THE FOURTEENTH AMENDMENT IS INVALID

Fifthly, now some, in order to impose themselves on others and on their property rights, and to control others (interfering in their efforts for the successful conduct of their businesses), resort to the law, and some specifically bring forward the Fourteenth Amendment to that end and purpose; to which our answer is that said Amendment is not legally a part of the Constitution, as it was never *proposed* by the House or *ratified* in accordance with the requirement of Article V thereof, as the vote of the House was 120 out of 184 (of even that Rump Congress), and the alleged ratification of the States was obtained only by a process in conflict therewith: seven Southern States, having been accepted to ratify the *Thirteenth* Amendment a short time before, were rejected when they, along with the other Southern States, rejected the Fourteenth Amendment, and, by intervening *Resolution*, vetoed by the President, these Recognized States were told that they would not be recognized *again* until they had voted to ratify the Fourteenth Amendment; and to effect their will the military was put in full power all over the South. Such was the pretended ratification thereof as proclaimed by the Secretary. In the meantime, New Jersey and Ohio had reversed their vote of ratification before the necessary two-thirds had been obtained, and yet they were counted as necessary to ratification, as shown by the Secretary's Proclamation. California and Oregon failed to ratify. Therefore we contend that the Amendment failed.

As far as has been determined, the Supreme Court has never construed the said Article V from the Four Corners of the Constitution, the true Rule of construction in the instant case being a proposal by "two thirds of both Houses", whereas the Fourteenth Amendment was actually proposed by only two-thirds of those *present*. Congress, when proposing Amendments, is acting extra-curricularly, not legislatively, and so, when it is engaged in *impeachments* and *treaty-making*, in such case the word "present" is subjoined to "two-thirds". Another instance of such use is in connection with recording the Yea and Nay votes: "one fifth of those Present" (Art. I, Sec. 5(3)). Therefore, when the Founding Fathers meant *Present* they said "Present". That view, it may be said, has been used more explicitly during the past year by Retired Justice Whittaker in a speech in Washington, D. C., *namely*, two-thirds of the *"elected"* members. That, beyond all reasonable argument, is the true construction, *Expressio unius est exclusio alterius* being the true and controlling rule of interpretation in such cases.

Laches is pleaded in some cases and will doubtless be so pleaded here, but it is unavailing against the Constitution, as "However the Court may interpret the Provisions of the Constitution, it is the Constitution which is the law and not the decisions of the Courts." — Charles Warren's *The Supreme Court in the United States History*. See also Storey Cowley and this Court's holdings, all well known. *U. S. v. Gugel*, 119 F. Supp. 897, and *U. S. v. Assn. of Citizens Councils*, 187 F. Supp. 846, and *Leser v. J. M. Garnett*, 258 U.S. at 136. Time does not cure a wrong against the Constitution as it may do in Private litigation.

In summation, we contend

1. That the actions of the State in the matter were not such connections as to support the Appellants' conclusions,

2. That particularly in relation to the matter of the *marketing* of the property, this was a distinct business act with which the State had nothing to do,

3. That the right of choice in dealing with one's property should be preserved,

4. That religious liberty should be protected under the First Amendment, and

5. That the Fourteenth Amendment is an unconstitutional instrument.

SOME PERTINENT CASES AND COMMENTS

The Fourteenth Amendment caused this Comment years ago by Justice Holmes:

> "I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the Constitutional rights of the States. As the decisions now stand, *I see hardly any limit but the sky to the invading of those rights if they happen to strike a majority of this Court for any reason to be undesirable.*" *Int. Shoe Co. v. Washington,* 326 U.S. 310, 327.

Former Solicitor General Beck, in *The Vanishing Rights of the States,* makes an extended pertinent Comment on this subject and says "How difficult it is for" the creators of an instrument or document to prevent those of the future from "stooping to a . . . misconstruction" of their purpose, and even explicit language.

Hamilton understood, as did all the Founding Fathers, that

> "There is sufficient diversity in the State of *property,* in the *genius, manners, and habits of the people of the different parts of the Union, to occasion a material diversity of disposition in their representatives to-*

wards the different ranks and conditions of society. And though an intimate intercourse under the same government will promote a gradual assimilation in some of these respects yet there are causes, as well *physical* as moral, which may, in a greater or less degree, permanently nourish different propensities and inclinations in this respect." Federalist, Art. 60.

The Court in *Ullman v. U. S.*, 350 U.S. 422 433, quoting the lower Court, said,

> "Indeed, the Court has stated that words may be 'strained' in the candid service of avoiding a serious Constitutional doubt", citing *U. S. v. Rumely,* 345 U.S. 41, 47,

and quoting the C.C.A. Judge in *Maffie v. U. S.*, 209 F. 2d 225, 227, further said,

> "Nothing *new* can be put into the Constitution except through the amending process. *Nothing old can be taken out without the same process.*"

The advantage of local State Control, as said by Justice Brandeis in the *New State Ice Case,* 332 U.S. 392, and quoted by Justice Jackson in *Power Commission v. East Ohio Gas Co.,* 338 U.S. 464, 488, follows:

> "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without the risk of the Country."

In dealing with a pertinent subject in *Western Union v. Lenroot,* 323 U.S. 490, 528, the Court spoke thus:

> "But if it (Congress) determined to reach this employment, *we do not think it would have done so by artifice* in preference to *plain terms.* It is admitted that it is beyond the *Judicial power of innovation to supply a direct prohibition by construction,*"

and that

> "We think that we should not try to reach the *same result by a series of interpretations so far fetched and forced* as to bring *into question the candor of Congress* as well as the *integrity of the interpretation process*,"

and the Court in *U. S. v. Rabinowitz*, 339 U.S. 85, 58, remarked that

> "*Especially ought the Court not reenforce needlessly the instabilities of our day by giving fair ground for the belief that the law is the expression of chance* — for instance, of *unexpected changes* in the Court's composition and the contingencies in the choice of successors."

The process of escalating is expressed in *U. S. v. Zucca*, 351 U.S. 91, 100, as "a *creeping one* rather than one that proceeds at full gallop."

Circuit Court Judge Sobeloff, as Solicitor General, explained this Process in this way, as told by the Baltimore *Sun* of December 14, 1954:

> "The Supreme Court, he said, *is not only the adjudicator of legal questions*, but 'in many instances is the final formulator of *national policy*.'
>
> "The example he offered of the court's policy-making function was the decision last May in which the court ruled school segregation unconstitutional.
>
> "Like Congress, or any *other policy-making body*, the court *chooses the appropriate time* to decide important questions, he said.
>
> " 'For example, for several years before taking the school segregation cases the court *repeatedly turned away opportunities to decide questions in that area*. . . .'
>
> "And lately, the court *declined to review a ruling on segregation in public housing*, 'perhaps' Mr. Sobeloff said, '*because the court thought it best, after deciding*

the school cases, not to say more about other aspects of segregation at this time.'

"The *question of timing,* especially in cases involving political controversy, 'can be of supreme importance' to the court."

He also made a pertinent remark in the American Bar Journal, in referring to "hard cases". He said that a government lawyer was telling him "with a show of shock and dismay that in a certain case Judge Parker declared from the Bench, *'Well, if that is the law, any judge worth his salt will find some way to overcome it.'"* (Emphasis supplied.)

Reference here could well be made to Justice Roberts' dissent in *Smith v. Allright,* 321 U.S. 649, 669, a Texas Negro voting rights case.

If the Constitution is to be treated as flexible to meet the times, the Court in *Davis Co. v. Penna. Co.,* 337 Pa. 456, declared that

"... the law would become the *mere football* of the *successively changing personnel* of the Court and 'the known certainty of the law' which Lord Coke so wisely said 'is the safety', would be utterly destroyed." (Emphasis supplied.)

From the Preceding History and the cases, the "Changed Court" gave the Fourteenth Amendment another "twist" when it decided the School cases, it overruled the Supreme Court opinion in the *Plessy Case,* and it has served as a "Bellwether" for other angles. In *McCabe v. Santa Fe Ry. Co.,* 225 U.S. 151, the Court had said,

"It has been *decided* by this Court, so that *the question could no longer be considered an open one, that it is not an infraction* of the 14th Amendment for a *State to require separate but equal accommodations* for the races."

and we Conclude, for sake of Brevity, by quoting from *Barbier v. Connally*, 113 U.S. 31, preceding the *Plessy Case*, where Justice Field declared that

> *"Neither the Amendment — broad and comprehensive as it is nor any Amendment, was designed to interfere with the power of the State — sometimes termed its police power — to regulate and promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."* (1885).

We are aware, of course, of the twist and turns of the cases as analysed in the opinion of the lower Court.

CONCLUSION

The decision of the lower court should be sustained on the grounds set forth by it, and if not, then on the grounds herein set forth, aside from any others.

Respectfully submitted,

GEO. WASHINGTON WILLIAMS,
231 St. Paul Place,
Baltimore, Maryland,

THOMAS F. CADWALADER,
1109 Fidelity Building,
Baltimore, Maryland,

Attorneys for:
Maryland Petition Committee, Inc.,
Oliver Ellsworth Rue,
Maryland Lobby.